

**Agriculture & Water Quality in the Pacific Northwest
And
"Connections" Idaho's Ground Water Technical Workshop**

ABSTRACT

**Pesticide Use Near Waterways: NPDES Permitting and ESA Compliance
Teresa A. Hill, Stool Rives LLP**

The Supreme Court recently let stand a Ninth Circuit decision holding that aerial spraying of insecticides directly over and into water constituted a "point source" discharge for which a permit was required under the Clean Water Act. *League of Wilderness Defenders v. Forsgren*. EPA has issued guidance urging a narrow, case-by-case application of *Forsgren* and has even rejected the logic and holding of the case, stating that a National Pollution Discharge Elimination System ("NPDES") permit is not required for applications in compliance with FIFRA labeling requirements. However, this guidance is not binding on the courts and has questionable value in defending against citizen suits in Oregon, California, Washington, Idaho, Montana and Alaska, where *Forsgren* is now the law of the land.

Further complicating this issue is the *Washington Toxics Coalition v. EPA* case, involving a suit by environmental groups under the Endangered Species Act to establish mandatory buffers for application of pesticides near salmon-bearing streams in the Northwest.

Guidance regarding NPDES permitting is also expected this year as the United States Supreme Court reviews whether a water management district's pumping station, which moved polluted water from a navigable body of water into another distinct body of navigable water, without adding additional pollutants, is a point source discharge requiring an NPDES permit.

Recent legal developments regarding what constitutes "waters of the United States" subject to Clean Water Act permitting, the need for NPDES permits, the impact of the Endangered Species Act, and the threat of citizen suits, creates a complicated puzzle for agricultural and industry groups' use of aerial spraying of pesticides. These legal developments touch nearly all of the conference's topic areas, including Management-Pesticides, Regional Issues and Salmon Issues. This [panel] presentation will address current legal developments, economic and environmental impacts and applied solutions regarding this legal puzzle.